

## **EXHIBIT 12**

3/29/2006 MARR, Shannon E. V.1

0001

1                   **THE UNITED STATES DISTRICT COURT**  
2                   **FOR THE DISTRICT OF MASSACHUSETTS**

3                   -----x

4                   **IN RE PHARMACEUTICAL : MDL 1456**  
5                   **INDUSTRY AVERAGE WHOLESALE : Master File No.**  
6                   **PRICE LITIGATION : 01-CV-12257-PBS**

7                   -----x

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9                   **Great Falls, Montana**

10                  **Wednesday, March 29, 2006**

11

12                  **Deposition of SHANNON E. MARR, a witness**  
13                  **herein, called for examination by counsel for**  
14                  **Defendants in the above-entitled matter, pursuant**  
15                  **to notice and the Federal Rules of Civil**  
16                  **Procedure, the witness being duly sworn, by**  
17                  **agreement, by CRAIG KNOWLES, a Notary Public in**  
18                  **and for the State of Colorado, taken at La Quinta**  
19                  **Inn, Great Falls, Montana, at 9:00 a.m., on**  
20                  **Wednesday, March 29, 2006, and the proceedings**  
21                  **being taken down in Stenotype by CRAIG KNOWLES and**  
22                  **transcribed under his direction.**

3/29/2006 MARR, Shannon E. V.1

1           **Prior to coming to the Medicaid program in**  
2           **October of 2001, did you have any experience with**  
3           **pharmacy?**

4           A. No, none. No.

5           Q. And how is it that you came to take the  
6           job at the Montana Medicaid program in October of  
7           2001?

8           A. I knew I was moving to Helena. And during  
9           my time as orientation director I think I mentioned  
10          a big part of my job was advising functions for the  
11          University of Montana and serving on a variety of  
12          committees related to academic advising and student  
13          retention and that kind of thing.

14          A number of committees I that I served on  
15          I also served on with Lorie Moran who was a dean at  
16          the School of Pharmacy there at the University of  
17          Montana. So we were colleagues. She knew I was  
18          moving to Helena and knew of the position at  
19          Medicaid that was open, and she encouraged me to  
20          look into it.

21          I haven't -- had not had any pharmacy  
22          experience, but she sort of pitched it to me as a

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1           **Why is pharmacy participation important?**

2           A. I believe pharmacy participation would be  
3           important in Medicaid because Medicaid services  
4           individuals across the state. And if certain  
5           pharmacies, particularly in rural areas, dropped out  
6           of Medicaid, then individuals would be left without  
7           a choice for getting their prescription drugs.

8           Q. Do you remember any comments being made at  
9           the meeting that are not reflected in the minutes?

10          A. No.

11           **(Whereupon, Deposition Exhibit Marr**  
12           **009 was marked for identification.)**

13           **(Witness examines document.)**

14          **BY MR. DILLON:**

15          Q. You have been handed a document marked as  
16          Exhibit Marr 009.

17          A. Uh-huh.

18          Q. It is titled Analysis of Change to  
19          Pharmacy Reimbursement, and begins with Bates Number  
20          MT 013441.

21          I believe that you may have authored this  
22          document, based on a line on 013445 stating prepared

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1       **the dispensing fee.**

2           **Is this information that you would have**  
3       **provided to Mr. Kerber?**

4           **A. Yes.**

5           **Q. Then going back to what is Exhibit Marr**  
6       **014, I think this now might make sense. The e-mail**  
7       **from March 25th, where you are stating that: We are**  
8       **heeding the findings of the OIG study in that part**  
9       **of the reason we are changing our reimbursement is**  
10      **because of the study.**

11          **Is that, are you correcting what appears**  
12       **to be Mr. Kerber's mistaken statement that you are**  
13       **not doing anything with the report information?**

14          **A. Correct.**

15          **Q. I want to turn your attention on Exhibit**  
16       **Marr 015 to the first page.**

17          **Did you look at what some of the other**  
18       **states' comments were to the OIG report?**

19          **A. I'm sure I did.**

20          **Q. With respect to West Virginia in October,**  
21       **2001, to the right of that date there are some**  
22       **comments. It suggests there they are going to**

3/29/2006 MARR, Shannon E. V.1

1 generic AWP minus 30 percent plus \$2.50 dispensing  
2 fee.

3 A. Uh-huh.

4 Q. Is it fair to say that you were aware at  
5 the time you reviewed this document that West  
6 Virginia was contemplating, or was going to a  
7 generic reimbursement rate of AWP minus 30 percent?

8 A. Yes.

9 Q. Other than the six states referenced in  
10 this particular document, are you aware of  
11 conversations you had with any other states  
12 regarding your response to the OIG report?

13 MS. BRECKENRIDGE: Objection.

14 A. Yes, I am aware of other conversations.

15 BY MR. DILLON:

16 Q. What other states do you recall having  
17 discussions with?

18 A. Well, I didn't recall any until I saw in  
19 my -- one of these previous exhibits that I actually  
20 contacted surrounding states in Montana, like  
21 Washington, Oregon, Idaho, Wyoming, North Dakota,  
22 South Dakota.

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1 phone or e-mail, or some other way?

2 A. Probably by phone or e-mail or a  
3 combination of them.

4 (Whereupon, Deposition Exhibit Marr  
5 018 was marked for identification.)

6 BY MR. DILLON:

7 Q. You have been handed what has been marked  
8 as Exhibit Marr 018. It's an e-mail chain. The  
9 first page is MT 013462.

10 If you could just take a moment to review  
11 this.

12 (Witness examines document.)

13 A. Okay.

14 BY MR. DILLON:

15 Q. The first e-mail at the top dated --  
16 I apologize, I think it is all one e-mail.

17 A. Right.

18 Q. The e-mail is dated April 3rd, 2002. If  
19 you look kind of midway through on the left-hand  
20 column, it appears your e-mail address is listed as  
21 a recipient of this e-mail.

22 A. Uh-huh.

3/29/2006 MARR, Shannon E. V.1

1       **Q. Do you recall whether you received this e-**  
2       **mail?**

3       **A. I -- yes, I received it.**

4       **Q. And what is this e-mail about?**

5       **A. This looks to be an e-mail of -- from**  
6       **someone with a similar job in New York who was**  
7       **gathering information from the states about their**  
8       **AWP, or their reimbursement formulas.**

9           **Then he's referencing an article that was**  
10      **featured in the New York Times regarding this very**  
11      **issue.**

12       **Q. If you could turn to the second page of**  
13       **this exhibit, MT 013463, there is some information**  
14       **there about the state of Montana midway down the**  
15       **page.**

16           **And if you could turn also to page 4,**  
17       **there is kind of a textual description also at the**  
18       **very top related to Montana.**

19       **A. Uh-huh.**

20       **Q. Do you know how the author obtained this**  
21       **information? Is this something you provided?**

22       **A. I'm sure it was.**

3/29/2006 MARR, Shannon E. V.1

1 formula?

2 A. It appears, based what is here, AWP is not  
3 used, then actual acquisition cost.

4 Q. If you could turn to 013464 for Washington  
5 state, it appears there their proposal is from AWP  
6 minus 14 for brand and AWP minus 50 for generic.

7 A. Uh-huh. Yes.

8 Q. Do you recall any discussions with anyone  
9 from Washington state about their proposed change  
10 from AWP minus 14 for brands and AWP minus 50 for  
11 generics?

12 A. I believe that is where Ron Kerber was  
13 from, so I think that would have been the extent of  
14 my conversations with him, or with the state of  
15 Washington.

16 Q. So when you had these conversations with  
17 Mr. Kerber, was that a two-way street? Were you  
18 finding out what he was doing, as well as he was  
19 finding out what you were doing?

20 A. I think if I remember correctly, he  
21 contacted me first to find out what Montana was  
22 doing. And then along the way, yes, we were sharing

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1 information back and forth about what each state was  
2 doing.

3 Q. To your knowledge, Montana never  
4 considered an AWP minus 50 percent discount for  
5 generics?

6 A. To my knowledge, no.

7 (Whereupon, Deposition Exhibit Marr  
8 019 was marked for identification.)

9 BY MR. DILLON:

10 Q. Feel free to review the document MT  
11 013759, but I'm going to ask you almost nothing  
12 about text, everything about the e-mail address.

13 A. Okay.

14 Q. It appears this is a document passing  
15 along a news article from the Denver Post related to  
16 Colorado pharmacy reimbursement and access issues.

17 A. Yes.

18 Q. My question to you goes more to at the  
19 top, things being addressed to yourself and Mr.  
20 Buska from a Kevin Quinn address indicating ACS.

21 A. Yes.

22 Q. Did you know Mr. Quinn?

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1 list from OIG?

2 A. Not that I recall.

3 Q. Did you receive any sort of newsletters or  
4 other publications related to pharmacy while you  
5 were at the Montana Medicaid program?

6 A. From OIG, or just generally?

7 Q. Anyone.

8 A. I think there were some newsletters from  
9 the Pharmacy Association and publications related to  
10 my role on the DUR board, which was really purely  
11 representative.

12 No, I don't recall other specific  
13 publications.

14 Q. Ms. Poulsen was previously deposed in  
15 this, and one of the statements she made in her  
16 deposition was that she had three constituencies  
17 which she referred to.

18 She said you have three constituencies in  
19 that position. You have the client whose health  
20 care is dependent upon you; you have the providers  
21 with whom you want to have a good relationship and  
22 cooperative relationship; and you have the taxpayer.

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1     **You have a responsibility to the state. And**  
2     **balancing those three roles was always what it was**  
3     **you tried to do.**

4                 **And my question, I guess, is, you held**  
5     **this job for a fairly short period of time. Was it**  
6     **nine months?**

7                 **A. October to June, yeah, whatever that is.**

8                 **Q. Would you agree with that assessment, that**  
9     **there were three different constituencies that you**  
10    **had to serve in that position?**

11                **A. I think, yes, that's a fairly accurate**  
12    **representation of the constituencies.**

13                **Q. I'd like to talk for a little bit of time**  
14    **about that provider constituency. In your case, who**  
15    **were your providers?**

16                **MS. BRECKENRIDGE: Objection.**

17    **BY MR. DILLON:**

18                **Q. Not specific names. It was meant to be a**  
19    **pretty simple question. They were primarily retail**  
20    **pharmacists; is that correct?**

21                **A. Yes, retail pharmacists. And the home**  
22    **infusion therapy providers.**

## **EXHIBIT 13**

Daniel Wade Peterson

December 15, 2005

Helena, MT

1

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

**CERTIFIED COPY**

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In re: PHARMACEUTICAL,  
INDUSTRY AVERAGE WHOLESALE  
PRICE LITIGATION

MDL DOCKET NO.  
CIVIL ACTION  
01CV12257-PBS

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THIS DOCUMENT RELATES TO:

ALL ACTIONS

---

DEPOSITION OF DANIEL WADE PETERSON

Taken at

Law Offices of

Gough, Shanahan, Johnson & Waterman

33 South Last Chance Gulch

Helena, Montana.

December 15, 2005

9:00 a.m.

Henderson Legal Services  
(202) 220-4158

Daniel Wade Peterson

December 15, 2005

Helena, MT

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1 A. Starting with the OIG?

2 Q. Yes.

3 A. The OIG studied actual acquisition costs in  
4 Montana and found that overall estimate of the  
5 discount below AWP on invoice prices was  
6 19.71 percent for brand name drugs and  
7 65.37 percent for generic drugs.

8 Q. Okay. Did the state of Montana consider  
9 lowering the formula of reimbursement for generic  
10 drugs to AWP minus a percentage closer to  
11 65.37 percent?

12 A. Not that I can remember.

13 Q. Do you know why this proposal was not  
14 implemented?

15 A. Our main concern from what I can remember  
16 at that time was -- was access issues for our  
17 clients.

18 In a rural state like Montana, access is  
19 very important that we have plenty of pharmacies  
20 willing to participate and accept reimbursement for  
21 our Montana Medicaid clients for our low income.

22 Another consideration was a report

Daniel Wade Peterson

December 15, 2005

Helena, MT

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1 does your pharmacist on staff contribute to the  
2 content of the due care program newsletter?

3 A. He hasn't, simply because his duties have  
4 kept him busy with our preferred drug list and  
5 getting that implemented.

6 Q. Does anyone within Montana Medicaid receive  
7 a copy of the due care program newsletter before  
8 it's disseminated to providers?

9 A. No.

10 Q. I would like to talk about the next item,  
11 reimbursement by federal upper limit?

12 MS. BRECKENRIDGE: You are back to --

13 MS. SMITH-KLOCEK: I'm sorry.

14 MS. BRECKENRIDGE: Exhibit Peterson 003?

15 MS. SMITH-KLOCEK: Yes.

16 MS. O'SULLIVAN: Exhibit Peterson 011.

17 MS. SMITH-KLOCEK: I'm sorry, Exhibit  
18 Peterson 011, which is the bullet points.

19 BY MS. SMITH-KLOCEK:

20 Q. How does reimbursement by federal upper  
21 limit help to contain costs by Montana Medicaid?

22 A. Any drugs that the CMS has identified as

Daniel Wade Peterson

December 15, 2005

Helena, MT

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1 being on the federal, or the MAC list or federal  
2 upper limit list typically has a lower  
3 reimbursement rate than what we would offer.

4 So that is why we have that within our  
5 reimbursement methodology which is we price our  
6 drugs the lesser of our EAC plus a dispensing fee,  
7 FUL plus a dispensing fee, or a provider's usual  
8 and customary fee charge. So whichever is lower.

9 Q. You used a term MAC earlier?

10 A. Yes.

11 Q. Is that maximum allowable cost?

12 A. Yes.

13 Q. Do you consider that to be the same as FUL?

14 A. Yes, I do.

15 Q. Does Montana Medicaid use -- I'm sorry.

16 Does Montana Medicaid set any MAC prices for  
17 generic drugs that are not on the federal upper  
18 limit list?

19 A. No, we do not have a state MAC program in  
20 Montana Medicaid.

21 Q. Has Montana Medicaid considered  
22 implementing a state MAC program?

## **EXHIBIT 14**

Dorothy Poulsen

February 22, 2006

Seattle, WA

1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

**CERTIFIED COPY**

IN RE: PHARMACEUTICAL )  
INDUSTRY AVERAGE )  
WHOLESALE PRICE )  
LITIGATION )MDL Docket No.  
                          )Civil Action 01CV12257PBS

DEPOSITION UPON ORAL EXAMINATION OF

DOROTHY POULSEN

9:00 a.m.

February 22, 2006

PERKINS COIE

1201 Third Avenue, #4800  
Seattle, Washington 98101

REPORTED BY: Judith A. Robinson, CCR #2171

Henderson Legal Services  
(202) 220-4158

Dorothy Poulsen

February 22, 2006

Seattle, WA

17

1 going to go through your employment history and  
2 prior jobs and I'll address that in a few minutes.

3 Do you recall how you learned when you  
4 were the Montana Medicaid pharmacy program officer  
5 that AWP did not represent actual acquisition cost?

6 MR. LOPEZ: Object to the form.

7 THE WITNESS: It -- through discussions  
8 with other pharmaceutical people -- through  
9 discussions with other program officers in other  
10 states. Through -- I mean, I guess it was not  
11 anything specific. It was just a general  
12 understanding.

13 BY MS. O'SULLIVAN:

14 Q. It was a general understanding among State  
15 pharmacy program officers that AWP didn't represent  
16 actual acquisition cost?

17 A. Right.

18 Q. We'll talk a few minutes about the topic  
19 of deposition preparation.

20 Did you meet with Mr. Lopez to prepare for  
21 this deposition?

22 A. Yes.

Henderson Legal Services  
(202) 220-4158

Dorothy Poulsen

February 22, 2006

Seattle, WA

23

1           Q. Did your position within the nursing home  
2           section of Montana Medicaid involve any  
3           responsibility for reimbursement for drugs?

4           A. No.

5           Q. There were no pharmacy issues involved in  
6           your position?

7           A. Not that I remember. The pharmacy  
8           position was all by itself.

9           Q. I'm going to turn to that job in a minute  
10          and probably spend a few hours on it, frankly.

11          When did you stop working at Montana  
12          Medicaid?

13          A. In June 2001.

14          Q. Why?

15          A. Because we moved to Seattle.

16          Q. Are you currently employed?

17          A. I am not.

18          Q. Are you retired?

19          A. Well, that's not a word we use anymore,  
20          but yes. Sort of.

21          Q. After you stopped working at Montana  
22          Medicaid full-time in June of 2001, did you do any

Dorothy Poulsen

February 22, 2006

Seattle, WA

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1 consulting work for Montana Medicaid?

2 A. No.

3 Q. Okay. Turning to your job as the pharmacy  
4 program officer, I believe you said you started at  
5 some point in 1996?

6 A. Yes.

7 Q. I think we have documents that might help  
8 you place exactly when that was.

9 Is it fair to say, you don't recall off  
10 the top of your head?

11 A. Well, yeah. I know I started Medicaid in,  
12 I'm pretty sure it was July of '93. I know I worked  
13 about 3 years in that position. I worked in that  
14 position about 5 years. So it would be about June  
15 or July of '96. I would have to look at my resume.

16 Q. Please don't take this question the wrong  
17 way.

18 But what in your prior employment or  
19 education qualified you for the job of pharmacy  
20 program officer?

21 MR. LOPEZ: Object to the form.

22 THE WITNESS: In terms of knowing about

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(202) 220-4158

Dorothy Poulsen

February 22, 2006

Seattle, WA

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1 towards the end, the last year I was there.

2 At this point in time, I don't remember  
3 why it came up or what it was about. But it always  
4 just struck me as a strange thing that we were  
5 talking about the new-true Medicaid AWP, recognizing  
6 there was an old true AWP. The language is silly.

7 Q. Why did it strike you as strange that it  
8 was referred to as, "new-true AWPs"?

9 A. Well, that would assume there was an,  
10 "old-true Medicaid AWP."

11 Q. When, in fact, there was not?

12 A. There was no "true" Medicaid. I mean,  
13 there wasn't a Medicaid AWP. There was AWP that  
14 Medicaid used and many, many Medicaid programs used  
15 as a basis for their reimbursement.

16 Q. You can put Exhibit Poulsen 001 away. At  
17 the end of the deposition, the court reporter is  
18 going to want that, so you can turn that over.

19 Are you familiar with the term, "network  
20 of providers? What is your understanding of what  
21 that means?

22 A. Typically, it means everybody who has

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Dorothy Poulsen

February 22, 2006

Seattle, WA

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1 be reimbursed our actual acquisition cost plus a fee  
2 equivalent to the amount we receive for other state  
3 facility prescriptions."

4 A. Right.

5 Q. Did you agree that the change to  
6 reimbursement methodology from AWP minus 10% to  
7 actual acquisition cost occur for MedManagement?

8 MR. LOPEZ: Object to the form.

9 THE WITNESS: Yes.

10 BY MS. O'SULLIVAN:

11 Q. Is it fair to say, that as of this time in  
12 1997, you understood that AWP minus 10% did not  
13 represent actual acquisition cost?

14 A. Yes.

15 Q. The court reporter has handed you Exhibit  
16 Poulsen 004 Bates numbered MT018455, a 1-page  
17 document dated July 30, 1997.

18 Is this a letter that you sent to Al Stark  
19 of MedManagement?

20 A. Yes, it is.

21 Q. And comparing Exhibit Poulsen 003 to this  
22 document has Exhibit Poulsen 004, is this your

Dorothy Poulsen

February 22, 2006

Seattle, WA

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1 anyway, so it was an acceptable thing for us to do.

2 It was that or interdepartmental warfare.

3 MS. O'SULLIVAN: Let's take a short break.

4 (Off the record.)

5 BY MS. O'SULLIVAN:

6 Q. I wanted to follow up on 2 topics you  
7 testified about earlier.

8 One is, you testified you received  
9 MedManagement acquisition costs related to generic  
10 drugs and you compared those to Montana Medicaid's  
11 costs.

12 Did you also compare acquisition costs  
13 from non-generic drugs?

14 A. If they used them. I mean, I honestly  
15 don't remember specifically what I looked at. There  
16 were probably some non-generics that they used.

17 Q. And so there the comparison would have  
18 been to AWP minus 10%?

19 A. Yes.

20 Q. I asked you those questions about the OIG  
21 report about underreimbursed or overreimbursed and I  
22 think I may have confused you. I'm now asking for

Dorothy Poulsen

Seattle, WA

February 22, 2006

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1 what you believe. Not what the report said but what  
2 you believe.

3 Did you believe that providers were being  
4 overreimbursed?

5 MR. LOPEZ: Object to the form.

6 THE WITNESS: I guess, generally, I didn't  
7 think my providers were being overreimbursed.

8 BY MS. O'SULLIVAN:

9 Q. Did you think that providers were at times  
10 undercompensated for their services?

11 MR. LOPEZ: Object to the form.

12 THE WITNESS: Since they weren't being --  
13 since they weren't being reimbursed or paid  
14 specifically for their services, their services were  
15 not being paid for. It wasn't a system of  
16 reimbursement that I thought was in the best  
17 interest of the pharmacies in the long-term.  
18 Because I assumed that eventually there would be  
19 concern about the cost of the drug, which were  
20 always going up. And if, for instance, we said to  
21 the pharmacists, you have to charge us only your  
22 acquisition costs and we had some mechanism to

Dorothy Poulsen

February 22, 2006

Seattle, WA

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1 determine whether or not they were actually doing  
2 that and we were paying them \$4.14 for dispensing,  
3 they would not have been reimbursed adequately.

4 BY MS. O'SULLIVAN:

5 Q. **They would have lost money on every drug**  
6 **they dispensed?**

7 MR. LOPEZ: Object to the form.

8 THE WITNESS: They would have lost money  
9 on their business, yes.

10 BY MS. O'SULLIVAN:

11 Q. **And that would have harmed access to**  
12 **Medicaid beneficiaries?**

13 MR. LOPEZ: Objection.

14 THE WITNESS: Yes. Well, it would have  
15 done worse than that.

16 BY MS. O'SULLIVAN:

17 Q. **What would it have done?**

18 A. In many instances, it would have closed  
19 pharmacies in small towns and it would have hurt the  
20 population as a whole.

21 Q. **Mrs. Poulsen, the court reporter has**  
22 **handed you what has been marked Exhibit Poulsen 006,**

Dorothy Poulsen

February 22, 2006

Seattle, WA

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1 Q. Where it begins:

2 "We, and almost all states." The second  
3 or last full paragraph --

4 A. Uh-huh.

5 Q. -- it says:

6 "We, and almost all states pay a  
7 percentage off of AWP, we pay AWP less 10.5% plus  
8 fee in Arkansas. Our research suggests AWP is  
9 increasing a bogus mark. The Wholesaler Acquisition  
10 Cost (WAC) that we have access to is often half or  
11 less of the AWP."

12 Did you understand what Mr. Hanley was  
13 referring to by calling AWP a bogus mark?

14 A. Well, yes. I generally understood,  
15 average wholesale price wasn't average wholesale  
16 price. That it came much closer to what I was  
17 talking about before, the manufacturer's recommended  
18 price but that it was called AWP.

19 Q. And then it goes on to say in this Email  
20 from Mr. Hanley:

21 "When we pay off AWP, we pay the single  
22 independent retailer the same as the chain who gets

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(202) 220-4158

Dorothy Poulsen

February 22, 2006

Seattle, WA

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1           Do you see that?

2           A. Yes.

3           Q. Do you see the third sentence where it  
4         says:

5                 "Almost everyone who is familiar with  
6         pharmacy reimbursement knows that AWP, 'Ain't What's  
7         Paid'?"

8           A. Yes.

9           Q. Did you know that?

10          A. Yes. I mean, the common knowledge was  
11         that AWP was, again, as I've said before, not what  
12         it sounded like. That's why it was discounted.

13          Q. And you knew that while you were the  
14         pharmacy provider for Montana Medicaid?

15          A. Yes. I wouldn't have been paying  
16         attention if I didn't know that.

17          Q. Turning to the last paragraph on the same  
18         page and the second full sentence:

19                 "It is true that ingredient reimbursement  
20         is supposed to be based on estimated acquisition  
21         cost. The ancillary costs of dispensing the drug  
22         are supposed to be accounted for by the dispensing

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1       **pharmacy programs for Medicaid across the country**

2       **did talk?**

3                    MR. LOPEZ: Objection.

4                    THE WITNESS: No. Actually, in -- in what  
5     terms? No. I mean, I don't know that I had ever  
6     heard "Ain't What's Paid" before I read here. And  
7     no, we didn't usually talk in these terms. This was  
8     the -- in -- in any discussions that there may have  
9     been about pricing, the -- the way that it would  
10    have been phrased would not have been as informal as  
11    this.

12    BY MS. O'SULLIVAN:

13                  Q.    **But you did testify a few minutes ago,**  
14                  **that it was common knowledge that AWP was, "Ain't**  
15                  **What's Paid"?**

16                  MR. LOPEZ: Object to form.

17                  THE WITNESS: Colloquially, yes. I mean,  
18     we understood that AWP didn't reflect the average  
19     wholesale price.

20    BY MS. O'SULLIVAN:

21                  Q.    **And the AWP also didn't reflect the actual**  
22                  **acquisition costs?**

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1 BY MS. O'SULLIVAN:

2 Q. Exhibit Poulsen 012 is a document with a  
3 Bates range of MT006626 to 6642, entitled, "Medicaid  
4 Services Prescription Drug Pricing," with your name  
5 on it, "Dorothy Poulsen, Program Officer" and the  
6 date, "December 6, 1999."

7 Will you please take a look at this  
8 document and my question is, did you prepare this  
9 report?

10 A. I did.

11 Q. What is it?

12 A. It's a summary or review of the Medicaid  
13 drug program. This, I believe, was more than likely  
14 done for the legislative session. So this was one  
15 of those informative documents, so that legislators  
16 would understand how the program works and what it  
17 was that we did.

18 Q. So this document was sent by Montana  
19 Medicaid to Montana State legislators?

20 A. You know, I don't know how it was used.

21 Normally when they did things like that,  
22 my name wouldn't have appeared on it. I'm not sure

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1 exactly. It may have been a report that I did for  
2 the department and they used it. I'm not absolutely  
3 sure what I used this for at this point in time.  
4 But this is what it looks like. This was a time  
5 when the cost of the program was going up and people  
6 were very, very concerned about how much the  
7 pharmacy program was costing.

8 And so, again, my approach to it was to  
9 try to educate people as to how things were  
10 operating before they proceeded to cut my budget  
11 without -- without input.

12 Q. The second page of Exhibit Poulsen 012  
13 MT00627 --

14 A. Uh-huh.

15 Q. -- states on the last sentence of the  
16 second-to-the-last paragraph:

17 "The current maximum dispensing fee of  
18 \$4.20 covers between one-fourth and one-half of the  
19 cost incurred by pharmacies."

20 What did you mean by that?

21 A. Well, when -- pharmacies had to send in  
22 information for their dispensing fee.

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1           **Q. A dispensing fee survey?**

2           A. Yes. Good. So I vaguely recall. I  
3       recall better when a new pharmacy came on line and  
4       they were applying for a dispensing fee. And they  
5       would have to indicate what their expenses were and  
6       what their cost of business was. And then that --  
7       that divided by the number of prescriptions was how  
8       we could see -- what we took as their cost of  
9       filling a prescription.

10          **Q. What type of costs are you talking about?**

11          A. Well, personnel. You know, the building,  
12       the heating. There was something for inventory.  
13       But that was separate because we weren't looking at  
14       the cost of the drug. We were looking at the cost --  
15       the other operational costs.

16          **Q. You just referred to the dispensing fee  
17       surveys. I want it ask:**

18           **What was your basis for the conclusion  
19       that dispensing fees were only covering one-quarter  
20       to one-half of the costs incurred by pharmacies?**

21          A. When they filled those out and you divided  
22       it out, their cost of doing a prescription would

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1 have been \$16 or, you know, between \$8 and \$16 per  
2 prescription and we were paying \$4.20.

3 When we used our methodology to determine  
4 what our dispensing fee should be, the amount we  
5 came up with was invariably higher than what the  
6 capped dispensing fee was. So virtually everyone had  
7 the capped dispensing fee.

8 Q. Did you do the analysis that led to this  
9 conclusion that the dispensing fee only covered one-  
10 quarter to one-half of the cost?

11 A. I believe so.

12 Q. Do you know where those dispensing fees  
13 are located at Montana Medicaid?

14 A. In a file folder.

15 Q. Who keeps that file?

16 A. The pharmacy program officer or in  
17 archives. Or at this point in time, they may have  
18 done many things differently. But at the time I was  
19 doing it, it would have been in a file folder.

20 Q. Based on this analysis that you did in  
21 Exhibit Poulsen 012, was it your understanding that  
22 Montana Pharmacy would lose money on every drug it

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1 dispensed, unless it received some additional  
2 reimbursement from Medicaid?

3 MR. LOPEZ: Objection.

4 THE WITNESS: That was my rationale for  
5 paying them is AWP less 10%, rather than some other  
6 amount, is that otherwise, they would not be paid  
7 sufficiently to provide services to our clients.

8 BY MS. O'SULLIVAN:

9 Q. Was it your understanding that the  
10 reimbursement methodology of AWP minus 10% was in  
11 part intended to make up for the lack of  
12 reimbursement for the dispensing fee?

13 MR. LOPEZ: Objection.

14 THE WITNESS: That was my assumption.

15 When I came into the position, this was a system  
16 that was set up. This was how it was set up. What I  
17 then tried to determine or figure out over the years  
18 is why we would set things up this way. So that was  
19 my understanding is we paid this way because -- I'm  
20 not sure which is the chicken and which is the egg.  
21 Did we pay a low dispensing fee because we thought  
22 that they were making money on the drug? Or did we

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1 let them have money on the drug because we were  
2 paying them a low dispensing fee? I don't know. I  
3 just came into it and that's where that was.

4 BY MS. O'SULLIVAN:

5 Q. Have you ever hear of the term, "cross-  
6 subsidization"?

7 A. No. Not that I know of.

8 Q. Let's turn to MT6627 of Exhibit Poulsen  
9 012.

10 Did you write in the last paragraph:

11 "Drug pricing is a prime example of free  
12 market capitalism at work in the United States,  
13 manufacturers set the price of their drugs  
14 independent of any regulation or guideline. When  
15 there is competition, the prices of drugs decreases;  
16 without competition, the pharmaceutical company  
17 charges whatever the market will bear"?

18 A. Yes. I would have written that.

19 Q. And you thought it was accurate when you  
20 wrote it?

21 A. Yes, I did.

22 Q. Page 6629. And the second full paragraph

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1 for billing medications or drugs.

2 Q. Are you familiar that with multi-source  
3 drugs from different manufacturers, the J code is  
4 the same?

5 A. Exactly.

6 Q. Are there also single-source products  
7 where 2 or more products have the same J code?

8 A. As far as I know, yes.

9 MR. LOPEZ: I'm going to object to the  
10 form.

11 BY MS. O'SULLIVAN:

12 Q. Do you know of any examples?

13 A. I don't remember any examples.

14 Q. Could Montana Medicaid determine who a  
15 manufacturer of a particular drug is based only on  
16 the J code?

17 A. No.

18 MR. LOPEZ: Object to the form.

19 BY MS. O'SULLIVAN:

20 Q. Why not?

21 A. Because it's category code basically and  
22 isn't specific. The NDC is specific to

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1 all this worked out. I think our plan had been that  
2 we were going to do a State MAC and then we could  
3 implement those prices on an individual basis.

4 We were working with Consultec to allow us  
5 to set up a State and MAC price. But that didn't  
6 work out. There was the issue with FirstData Bank  
7 and there was controversy about FirstData Bank  
8 taking the Department of Justice's numbers. I mean,  
9 so that was more than Montana. That was national --  
10 it had a national scope to it.

11 Q. Looking at Exhibit Poulsen 025, which is a  
12 1-page document Bates numbered MT020421, is this an  
13 Email you wrote to Leslie Bratton on May 24th, 2000?

14 A. Yes.

15 Q. And did you testify previously, Ms.  
16 Bratton was at the Consultec PBM entity?

17 A. Yes.

18 Q. Where you wrote:

19 "We are not planning to discount these  
20 AWPs," what did you mean by that?

21 A. We were not planning to subtract 10% from  
22 them.

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1 Q. Mrs. Poulsen, Exhibit Poulsen 032 is a 3-  
2 page document Bates labeled MT018379 to 81.

3 A. Okay.

4 Q. Is the first page of Exhibit Poulsen 032 a  
5 memo that you wrote to -- for other Montana State  
6 employees regarding the State pharmacy contract for  
7 FY 2000 and 2001?

8 A. Yes.

9 Q. In the second paragraph of the document,  
10 where it refers to:

11 "My experience is similar to theirs in  
12 that I was informed after the Department of  
13 Corrections and contractor had reached an agreement,  
14 and this agreement was not consistent with the  
15 Medicaid reimbursement methodology then in place,"  
16 does this relate to your earlier testimony about the  
17 Department of Corrections contract?

18 A. Yes, it does.

19 Q. Turning to the second and third paged of  
20 Exhibit Poulsen 032, is this a fax that you sent to  
21 Gary Willems at the Department of Corrections on  
22 March 17th, 1999?

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1 the way they set things up or the way they had --  
2 they made decisions without keeping everybody in the  
3 loop and that sort of thing. That wasn't the way I  
4 operated or Medicaid operated.

5 **Q. As the pharmacy program officer for**  
6 **Montana Medicaid, is it fair to say, your focus was**  
7 **not totally budgetary?**

8 A. Absolutely.

9 Q. And is it also fair to say, you were not  
10 interested in the lowest cost you could possibly  
11 acquire drugs?

12 MR. LOPEZ: Object to form.

13 THE WITNESS: No. That's not -- that  
14 would not be true. I was very interested in having  
15 the lowest cost we could get drugs at. But I wanted  
16 to make sure that we had access to the drugs needed  
17 by our clients.

18 You have 3 constituencies in that  
19 position. You have the client whose healthcare is  
20 dependant upon you. You have the providers, with  
21 whom you want to have a good relationship and  
22 cooperative relationship and you have the taxpayer.

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1 You have a responsibility your the State. And  
2 balancing those 3 roles was always what it was you  
3 tried to do.

4 BY MS. O'SULLIVAN:

5 Q. Where you wrote on this Email that's

6 Exhibit Poulsen 036:

7 "The view held by Mary Dalton and others  
8 there during my time was that we should always let  
9 the Federal government pay rather than use state  
10 funds if we could do so. Thus, even when it was a  
11 different agency we cooperated in leveraging funds."

12 A. Right.

13 Q. What did you mean by that?

14 A. Exactly that. If it was permissible under  
15 Federal regulations to pay for services through  
16 Medicaid, then it was best to pay through Medicaid  
17 because the Federal government picked up 70% of the  
18 cost for the state of Montana.

19 (Whereupon, Various Documents were  
20 marked Exhibit Poulsen 037, Exhibit Poulsen 038,  
21 Exhibit Poulsen 039, Exhibit Poulsen 040, Exhibit  
22 Poulsen 041, Exhibit Poulsen 042, Exhibit Poulsen

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1 A. Exactly.

2 Q. I believe you testified that Montana  
3 Medicaid got the AWPs it used for reimbursement from  
4 Consultec or ACS?

5 A. We used their system to price things, yes.

6 Q. Do you know where FirstData Bank --

7 A. Where Consultec got it from?

8 Q. Right.

9 A. They got it from FirstData Bank.

10 Q. Do you know where FirstData Bank got its  
11 information?

12 A. You know, I think I -- I think from the  
13 manufacturers. But no, I don't know for a fact.

14 Q. Did you ever asked anyone at FirstData  
15 Bank?

16 A. I may have.

17 Q. Do you know if anyone at FirstData Bank  
18 ever told you?

19 A. No. I mean, I don't remember.

20 (Whereupon, Email Document MT016589

21 Through MT016590 was marked Exhibit Poulsen 048 for  
22 identification.)

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1 communication with him?

2 A. No. I don't recall where I got it.

3 Q. Looking at the last page of Exhibit  
4 Poulsen 049, it appears to be a map of the state of  
5 Montana --

6 A. Yes.

7 Q. -- listing licensed community pharmacies  
8 by county?

9 A. Yes.

10 Q. Have you seen this page before?

11 A. Well, I'm -- I can't be positive. But I  
12 would guess I probably have.

13 Q. I'm trying to understand it. If there was  
14 a chain pharmacy in a county would that count?

15 A. Oh. Yes. I don't think we would have  
16 differentiated between independents and a chain.

17 Q. So a community pharmacy means any  
18 available?

19 A. Exactly.

20 Q. Any pharmacy available in that county?

21 A. Yes.

22 Q. Does this document reflect that certain

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1       **counties in Montana had no pharmacy?**

2       A.     Yes.

3       Q.     **Was that of concern to Montana Medicaid?**

4       A.     Well, these would not be counties with a  
5           lot of people in them. And if there was no  
6           pharmacy, then likely there was almost no other  
7           health providers. So those people had to go  
8           somewhere else for their healthcare in any case. Of  
9           course, it was of concern to the state there were  
10          not health resources available to some people that  
11          were not available in close proximity to some  
12          people.

13       Q.     **And so it --**

14       A.     I mean it was a general concern. It's a  
15          rural state and access to healthcare is a major  
16          issue. It was as much as an issue for pharmacies as  
17          it was for any other health provider.

18           The numbers are so small, aren't they?

19           (Whereupon, Montana Department Of  
20          Public Health & Human Services, A Fascimile To: Etta  
21          Hawkins/Carolyn Schmitz, From: Dorothy Poulsen,  
22          Program Officer MT008391 Through MT008393 was marked

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1 just want to thank you for your time. I have no  
2 questions at this time.

3 THE WITNESS: Thank you.

4 MR. LOPEZ: We'll reserve signature.

5 (Whereupon, the deposition of Dorothy  
6 Poulsen was concluded at 6:09 p.m.)

7

8

9 S I G N A T U R E

10 I declare under penalty of perjury under the laws of  
11 the State of Washington that I have read my within  
12 deposition. And the same is true and accurate, save  
13 and except for changes and/or corrections, if any, as  
14 indicated by me on the change sheet page hereof.

15

16 Signed in Seattle, Washington, on  
17 the 17<sup>th</sup> Day of April, 2006.

18

19 Dorothy Poulsen

20 DOROTHY POULSEN

21 Taken: February 22, 2006

22 Judith A. Robinson, CCR

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Page 1

1 ERRATA

2 CAPTION: \_\_\_\_\_

3 DATE: February 22, 20064 WITNESS: Dorothy Poulsen5 I wish to make the following changes, for the following  
6 reasons:

7 PAGE LINE

8	<u>20</u>	<u>5</u>	CHANGE: <u>famous to infamous</u> REASON: <u>accuracy</u>
9	<u>20</u>	<u>7</u>	CHANGE: <u>1990 to 1985</u> REASON: <u>accuracy</u>
10	<u>20</u>	<u>7</u>	CHANGE: <u>add "and then full"</u> REASON: <u>accuracy</u> <u>time until 1990.</u>
11	<u>20</u>	<u>12</u>	CHANGE: <u>SRSS to SRS</u> REASON: <u>accuracy</u>
12	<u>22</u>	<u>14</u>	CHANGE: <u>I worked with staff</u> REASON: <u>accuracy</u> <u>in the community - based...</u>
13	<u>24</u>	<u>13</u>	CHANGE: <u>delete "I worked in the"</u> REASON: <u>clarification</u>
14	<u>24</u>	<u>14</u>	CHANGE: <u>delete "about 5 years."</u> REASON: <u>clarification</u>
15	<u>25</u>	<u>11</u>	CHANGE: <u>Baska to Buska</u> REASON: <u>accuracy</u>
16	<u>26</u>	<u>11</u>	CHANGE: <u>"which is" to "in"</u> REASON: <u>clarification</u>
17	<u>30</u>	<u>7</u>	CHANGE: <u>"concerns" to "conference"</u> REASON: <u>accuracy</u>
18	<u>30</u>	<u>10</u>	CHANGE: <u>"Their" to "the"</u> REASON: <u>clarification</u>
19	<u>33</u>	<u>21</u>	CHANGE: <u>delete "of"</u> REASON: <u>clarification</u>
20	<u>34</u>	<u>7</u>	CHANGE: <u>"or the" to "of the"</u> REASON: <u>clarification</u>
21	<u>34</u>	<u>17</u>	CHANGE: <u>delete "a"</u> REASON: <u>clarification</u>
22	<u>34</u>	<u>18</u>	CHANGE: <u>to "generally about kinds"</u> REASON: <u>clarification</u>

Page 2

1	PAGE	LINE	
2	<u>35</u>	<u>5</u>	CHANGE: <u>delete "coming out of"</u> REASON: <u>duplication</u>
3	<u>37</u>	<u>17</u>	CHANGE: <u>"him" to "them and"</u> REASON: <u>clarification</u>
4	<u>56</u>	<u>14</u>	CHANGE: <u>delete "and"</u> REASON: <u>clarification</u>
5	<u>58</u>	<u>20</u>	CHANGE: <u>add "to legislative hearings"</u> REASON: <u>clarification</u>
6	<u>67</u>	<u>6</u>	CHANGE: <u>"they" to "patients"</u> REASON: <u>clarification</u>
7	<u>67</u>	<u>6</u>	CHANGE: <u>add "taking medications on an on-going basis"</u> REASON: <u>clarification</u>
8	<u>67</u>	<u>7</u>	CHANGE: <u>add "unlike"</u> REASON: <u>clarification</u>
9	<u>68</u>	<u>3</u>	CHANGE: <u>409 or 408 to 4,09 or 4,08</u> REASON: <u>accuracy</u>
10	<u>81</u>	<u>14</u>	CHANGE: <u>"LouisTawn" to Lewistown</u> REASON: <u>accuracy</u>
11	<u>81</u>	<u>17</u>	CHANGE: <u>"what was one" to "there was another one"</u> REASON: <u>clarification</u>
12	<u>82</u>	<u>3-4</u>	CHANGE: <u>"made indicated" to Medicaid</u> REASON: <u>accuracy</u>
13	<u>83</u>	<u>14</u>	CHANGE: <u>"LouisTawn" to Lewistown</u> REASON: <u>accuracy</u>
14	<u>83</u>	<u>14</u>	CHANGE: <u>delete "outside of"</u> REASON: <u>clarification</u>
15	<u>84</u>	<u>9</u>	CHANGE: <u>"LouisTawn" to Lewistown</u> REASON: <u>accuracy</u>
16	<u>85</u>	<u>7</u>	CHANGE: <u>building to billing</u> REASON: <u>clarification</u>
17	<u>87</u>	<u>6</u>	CHANGE: <u>"we pay"</u> REASON: <u>clarification</u>
18	<u>87</u>	<u>7</u>	CHANGE: <u>"acquisitions" to "acquisition"</u> REASON: <u>clarification</u>
19	<u>87</u>	<u>11</u>	CHANGE: <u>"where" to "were"</u> REASON: <u>clarification</u>
20	<u>93</u>	<u>21</u>	CHANGE: <u>"at" to "as"</u> REASON: <u>clarification</u>
21	<u>110</u>	<u>5</u>	CHANGE: <u>regiment to regimen</u> REASON: <u>clarification</u>
22	<u>121</u>	<u>19</u>	CHANGE: <u>"being" to "not"</u> REASON: <u>clarification</u>

Page 3

1	PAGE	LINE	
2	<u>123</u>	<u>7</u>	CHANGE: <u>"do"</u> to <u>"buy"</u> REASON: <u>clarification</u>
3	<u>126</u>	<u>12</u>	CHANGE: <u>delete "that was what"</u> REASON: <u>clarification</u>
4	<u>126</u>	<u>21</u>	CHANGE: <u>"were supposed"</u> REASON: <u>clarification</u>
5	<u>126</u>	<u>22</u>	CHANGE: <u>"to have a narrow..."</u> REASON: <u>clarification</u>
6	<u>139</u>	<u>5</u>	CHANGE: <u>"Drug"</u> to <u>"Blood"</u> REASON: <u>accuracy</u>
7	<u>139</u>	<u>12</u>	CHANGE: <u>"Drug"</u> to <u>"blood"</u> REASON: <u>accuracy</u>
8	<u>140</u>	<u>16</u>	CHANGE: <u>delete "to"</u> <u>add "could"</u> REASON: <u>clarification</u>
9	<u>148</u>	<u>22</u>	CHANGE: <u>"exercise"</u> to <u>"increase"</u> REASON: <u>clarification</u>
10	<u>160</u>	<u>19</u>	CHANGE: <u>"at"</u> to <u>"a"</u> REASON: <u>clarification</u>
11	<u>160</u>	<u>20</u>	CHANGE: <u>delete "don't"</u> REASON: <u>clarification</u>
12	<u>173</u>	<u>12</u>	CHANGE: <u>"have"</u> to <u>"ask"</u> REASON: <u>clarification</u>
13	<u>199</u>	<u>3</u>	CHANGE: <u>"to"</u> to <u>"through"</u> REASON: <u>clarification</u>
14	<u>200</u>	<u>5</u>	CHANGE: <u>"or"</u> to <u>"other"</u> REASON: <u>clarification</u>
15	<u>217</u>	<u>22</u>	CHANGE: <u>LouisTown</u> to <u>LewisTown</u> REASON: <u>accuracy</u>
16	<u>224</u>	<u>22</u>	CHANGE: <u>"from"</u> to <u>"for"</u> REASON: <u>clarification</u>
17	<u>230</u>	<u>18</u>	CHANGE: <u>LouisTown</u> to <u>hewistown</u> REASON: <u>accuracy</u>
18	<u>230-231</u>	<u>22-1</u>	CHANGE: <u>LouisTown</u> to <u>hewistown</u> REASON: <u>accuracy</u>
19	<u>234</u>	<u>1</u>	CHANGE: <u>"your"</u> to <u>"to"</u> REASON: <u>clarification</u>
20	<u>254</u>		
	<u>243</u>	<u>10</u>	CHANGE: <u>"counsel"</u> to <u>"council"</u> REASON: <u>clarification</u>
21	---	---	CHANGE: _____ REASON: _____
22	---	---	CHANGE: _____ REASON: _____